

ALJ/VDR/avs

Decision 01-09-042 September 20, 2001

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Sea Planes
Incorporated for the Authority to Operate as a
Passenger Ocean Ferry Corporation Between the
Points of Marina Del Rey and Avalon on
Catalina Island.

Application 01-02-028
(Filed February 28, 2001)

O P I N I O N

Summary

This decision grants the application of Sea Planes, Incorporated (Sea Planes) to amend its certificate of public convenience and necessity (CPCN) by adding authority to operate scheduled vessel common carrier service between Marina Del Rey, on the one hand, and Avalon, on the other hand. Application (A.) 01-02-028 is closed.

Background and Procedural History

Sea Planes has authority (VCC 85) to operate scheduled passenger vessel service on coastwise routes between Santa Barbara and Marina Del Rey, and between San Diego and Marina Del Rey, with intermediate stops along these routes. (Decision (D.) 00-09-021 (September 7, 2000).)¹ In this application Sea Planes seeks to add authority to operate cross-channel vessel service between

¹ Sea Planes is not yet operating any vessel service pursuant to this authority.

Marina Del Rey and Avalon, the principal community and harbor on Santa Catalina Island. Sea Planes proposes to start the service in July, 2002, based upon the projected availability of its vessels.

Sea Planes is a startup company which presently has no significant capitalization, and no vessels available to operate its proposed services. In the application Sea Planes represents that it is currently seeking equity capital, federal grant monies, and loans (or leases) to finance the equipment and facilities necessary to perform its proposed services. Sea Planes claims that it will be unable to obtain capital or acquire vessels without first obtaining operating authority from us.

A timely protest and request for an evidentiary hearing was filed by Catalina Channel Express, Inc. (Catalina), a vessel common carrier that has authority to operate scheduled and nonscheduled service between San Pedro and Long Beach, on one hand, and Avalon, on the other.² Catalina protests the application as being premature, on the grounds that without funds for capital and operating expenses, and without appropriate vessels in its possession or control, Sea Planes cannot make the requisite showing of financial and operational fitness for obtaining the amendment to its CPCN.

No prehearing conference or evidentiary hearing was held. Instead, the ALJ issued a ruling on May 4, 2001, directing Sea Planes to supplement its application by filing documentation to demonstrate that it has adequate current

² Catalina currently does not operate any scheduled vessel services between Marina Del Rey and Avalon points. In addition to its protest, Pacific Adventure Cruise sought leave to file a late-tendered protest, which was denied by the assigned Administrative Law Judge (ALJ). The City of Avalon also sent a letter requesting certain conditions of approval, of which we have taken notice in preparing our order.

capital, or binding commitments therefor, to operate the proposed service.³ Sea Planes duly complied with this Ruling, and the application is ready to be decided ex parte.

Public Need for Service

Marina Del Rey is located in the Los Angeles metropolitan area on the Pacific coast between Santa Monica and the Palos Verdes peninsula. It is a very short distance from the Los Angeles International Airport (LAX), which can be reached in a few minutes' driving time. Avalon is the center of tourism, and the principal harbor, for Santa Catalina Island, a popular summer resort area. Currently there is no scheduled vessel service between Marina Del Rey and Santa Catalina Island.

Sea Planes' proposed service would make Santa Catalina Island significantly more accessible to residents of the greater Los Angeles area because of its greater proximity to communities in west central Los Angeles and the San Fernando Valley than San Pedro and Long Beach, the only Los Angeles area ports where scheduled service is now available. Moreover, Sea Planes intends to integrate this service with its coastwise services to Santa Barbara and San Diego, giving travelers and visitors new options for avoiding the area's crowded freeways. Sea Planes also plans to offer shuttle bus service to LAX, providing a new travel option for vacationers from outside Southern California.

In view of the immensity of the Southern California market and the total absence of competitive scheduled vessel service from Marina Del Rey or any

³ The Ruling admonished Sea Planes that it must satisfy Rule 1 of our Rules of Practice and Procedure in so doing.

nearby terminal, we find that Sea Planes' proposed and pending vessel services would fulfill a currently unserved public need. Sea Planes' plans for offering transfers between the Avalon runs and its coastwise services, and for establishing of intermodal arrangements for transferring from its vessels to LAX, are innovations which would not only better serve an existing need for transportation, but open new markets for recreational and business travel. Accordingly, we find that there is a need for the service proposed in this application.

Operational Fitness

The organization chart and resume filed as part of Sea Planes' application demonstrate that the company has assembled a capable and well-qualified management team that includes, among others, the former Chief Executive Officer of Catalina Clipper, LLC dba Catalina Cruises, which until recently operated cross-channel vessel service to Avalon. On staff are various consultants in safety, vessel and terminal design, and other disciplines critical to the establishment of this service.

Although it has no vessels at present, Sea Planes plans to have four new vessels built at a cost of approximately \$14 million apiece if it obtains the necessary capital from investors and lenders. These vessels will be built to Sea Planes specifications, meet all applicable Coast Guard and other standards, and in general represent the state of the art. Until the first of these is built Sea Planes intends to charter a vessel to provide the service, and has included in its application a letter from Catamaran Boat Co., LLC, of Freeland, Washington, which contains a firm offer to charter a 450-passenger vessel pending delivery of the new boats. Sea Planes has also furnished evidence that it is well along in

securing a site and designing an adequate terminal facility at Marina Del Rey. There is already a ferry dock at Avalon, which is implicit in the City of Avalon's letter to the Commission. In view of these facts we find that Sea Planes is operationally fit to operate the proposed vessel service.

Financial Fitness

As we stated at the outset, Sea Planes is a startup company with no significant capital at present. It plans to raise more than \$ 20 million in equity capital, and obtain loans or undertake lease liabilities of more than \$ 36 million. Sea Planes also assumes that \$ 5 million in federal grant money will be available to it. At this point receipt of the grant is uncertain, but Sea Planes is actively pursuing all avenues to obtain initial financing from these lenders, investors and the federal government, and requires operating authority from the Commission before it can obtain commitments.

We will not insist that Sea Planes have funds in hand before we grant operating authority. Adequate protection for the public interest is ensured by placing a two-year limit on Sea Planes' exercise of operating authority. This time limitation is reasonable, based on Sea Planes' representations, because it is sufficient to enable Sea Planes to capitalize the company and have its vessels constructed. Having granted Sea Planes' request for operating authority to start its coastwise services in D.00-09-021, it would make little sense for us to deny Sea Planes' present request for authority to operate complementary cross-channel service.

Sea Planes has made a sufficient showing that it probably has the ability to generate capital adequate to operate this proposed service. Its pro forma revenue and expense figures, and its proposed fares and projected load factors,

are reasonable. Sea Planes' financial projections demonstrate that the company should be able to survive its projected two-year period of deficit operation.

Conclusion

We will approve Sea Planes' request for authority to operate the service proposed in this application, subject to the conditions set forth in our Order.

Comments on Draft Decision

The draft decision of ALJ Ryerson in this matter was mailed to the parties in accordance with Pub. Util. Code Section 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Timely comments were filed by both parties and timely reply comments were filed by Sea Planes.

Findings of Fact

1. Sea Planes is a startup company that presently operates no vessel common carrier services. It currently has operating authority (VCC 85) to operate vessel common carrier service between Santa Barbara, Marina Del Rey, San Diego, and intermediate points along the Southern California coast.
2. There is a public need for the service proposed by Sea Planes in this application.
3. Sea Planes is operationally fit to provide the service.
4. Sea Planes is financially fit to provide the service.
5. Two years is a reasonable period for exercise of the requested operating authority. This period would allow Sea Planes to capitalize its company, secure vessels to provide the service, and make necessary terminal arrangements for its operations.

Conclusions of Law

1. Sea Planes' application to amend its CPCN as set forth in the application should be approved, subject to terms and conditions set forth in the Order.
2. A. 01-02-028 should be closed.

O R D E R

IT IS ORDERED that:

1. The certificate of public convenience and necessity (CPCN) of Sea Planes, Inc. (Applicant), a corporation, authorizing it to operate as a vessel common carrier (VCC), as defined in Pub. Util. Code § 238, to transport persons and their baggage, between the points and over the route set forth in Appendix VCC-85, is amended, subject to the conditions contained in the following paragraphs.
2. Applicant shall:
 - a. File a written acceptance of this amendment to its certificate within 30 days after this order is effective.
 - b. Establish the authorized service and file tariffs and timetables on or before September 1, 2003.
 - c. File tariffs on or after the effective date of this order. They shall become effective ten days or more after the effective date of this order, provided that the Commission and the public are given not less than ten days' notice.
 - d. Comply with General Orders Series 87, 104, and 111, and 117.
 - e. Maintain accounting records in conformity with the Uniform System of Accounts.
 - f. Remit to the Commission the Transportation Reimbursement Fee required by Pub. Util. Code § 423 when notified by mail to do so.

- g. Comply with all lawful local land use ordinances and regulations, and all lawful ordinances and regulations governing the use of harbors and docking facilities.

3. Applicant shall comply with all the rules, regulations, and requirements of the United States Coast Guard, including applicable Vessel Traffic System requirements, in the operation of the service authorized in Ordering Paragraph 1.

4. Applicant is authorized to begin operations on the date that the Rail Safety and Carriers Division mails a notice to the Applicant that its evidence of insurance and other documents required by Ordering Paragraph 2 have been filed with the Commission.

5. The amendment of Applicant's CPCN to operate as a Vessel Common Carrier granted herein expires, unless exercised on or before September 1, 2003, and does not alter the terms and conditions under which Applicants other services must be established.

6. The Application, as amended by Applicant's Supplement to Application, is granted as set forth above.

7. The protest of Catalina Channel Express, Inc. is denied.

8. This proceeding is closed.

This order is effective today.

Dated September 20, 2001, at San Francisco, California.

LORETTA M. LYNCH

President

HENRY M. DUQUE

RICHARD A. BILAS

CARL W. WOOD

GEOFFREY F. BROWN

Commissioners